

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

No. 4:10-CR-0049-FL-3  
No. 4:12-CV-176-FL

|                           |   |       |
|---------------------------|---|-------|
| WILLIE DEROD BEALE,       | ) |       |
|                           | ) |       |
| Petitioner,               | ) |       |
|                           | ) |       |
| v.                        | ) |       |
|                           | ) | ORDER |
| UNITED STATES OF AMERICA, | ) |       |
|                           | ) |       |
| Respondent.               | ) |       |

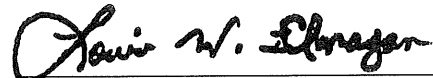
This matter is before the court on the Memorandum and Recommendation (“M&R”) of United States Magistrate Judge William A. Webb, regarding petitioner’s motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence (DE 128), and respondent’s motion to dismiss (DE 134). No objections to the M&R have been filed, and the time within which to make any objection has expired. This matter is ripe for ruling.

The court hereby ADOPTS the recommendation of the magistrate judge as its own, and, for the reasons stated therein, petitioner’s motion is DENIED, respondent’s motion is GRANTED, and this matter is DISMISSED. The clerk of court is directed to close the case.

Having determined that petitioner’s motion should be dismissed on the merits, the court turns to whether a certificate of appealability is warranted. “A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When relief is denied on the merits, an applicant satisfies this standard by demonstrating that reasonable jurists would find that the district court’s assessment of the

constitutional claims is debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84(4th Cir. 2001). Petitioner has failed to make the requisite substantial showing and, therefore, is not entitled to a certificate of appealability.

SO ORDERED, this the 25th day of March, 2013.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

LOUISE W. FLANAGAN  
United States District Judge